

401 KAR 5:006. Wastewater planning requirements for regional areas.

RELATES TO: KRS 224.10, 224.70, 224.73, 224A.040, 224A.050, 224A.055, 224A.070, 224A.080, 33 U.S.C. 1251 et seq.

STATUTORY AUTHORITY: KRS 224.10-100, 224.16-050, 224.70-100, 224.70-110, 224A.111, 224A.112, 224A.113, 40 C.F.R. 25.4, Parts 35, 130, 33 U.S.C. 1281, 1285, 1288, 1313

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to develop a comprehensive plan for the management of water resources and to provide for the prevention, abatement, and control of all water pollution. The Clean Water Act, 33 USC 1281 et seq. and more specifically, 33 USC 1313(e), requires the implementation of a continuing planning process by governmental bodies to provide for the control of water pollution. 33 USC 1288 requires the governor of the state to designate a boundary for areas within the state and single representative organizations within the areas to develop a wastewater treatment management plan applicable to all wastewaters generated within an area. [40 CFR Part 130](#) specifies further detail for compliance with Section 208 of the Clean Water Act, including the requirement that the state establish and maintain a continuing planning process that includes the process for incorporating elements of any applicable areawide wastewater treatment management plans under Section 208, applicable basin plans under Section 209 of the Clean Water Act, and a process for updating and maintaining water quality management plans, including schedules for revision. [40 CFR 130.6\(e\)](#) also requires the state and areawide agencies to update the plans as needed to reflect changing water quality conditions, results of implementation actions, and new requirements, or to remove conditions in prior conditional or partial plan approvals. This administrative regulation implements the required planning process for point sources of pollution for the Commonwealth of Kentucky in order to conform with federal requirements and provides for the preparation of wastewater treatment management plans by governmental agencies for point sources of pollution.

Section 1. Applicability. This administrative regulation shall govern the regional planning process for the development of water quality management plans to control point sources of pollution in given areas throughout the Commonwealth. This administrative regulation establishes the process by which regional planning agencies and the Commonwealth shall comply with Sections 201, 205, 208, and 303(e) of the Clean Water Act to provide planning for wastewater control in particular areas for point sources of pollution.

Section 2. Requirements. (1) No new regional facility shall be constructed, no average daily design capacity of an existing regional facility shall be expanded by more than thirty (30) percent, or no existing regional sewage collection system shall expand its equivalent population served by more than thirty (30) percent of the existing population, without the regional planning agency submitting a regional facility plan and the cabinet approving the plan. All regional facility plans shall be prepared by a registered professional engineer.

(2) A regional planning agency shall submit a regional facility plan or regional facility plan update when the following occurs:

- (a) A new regional facility is proposed to be constructed within the planning area;
- (b) The average daily design capacity of an existing regional facility is proposed to be expanded by more than thirty (30) percent;
- (c) The equivalent population served by an existing regional sewage collection system is proposed to be expanded by more than thirty (30) percent of the existing population served;
- (d) A regional facility or other governmental agency applies for a grant from the U.S. EPA or applies for a loan from the federally assisted wastewater revolving fund pursuant to the

requirements of [40 CFR Part 35](#) and [200 KAR Chapter 17](#). A plan of study shall be submitted to the cabinet for the project to be eligible to be placed on the project priority list and receive priority points;

(e) A regional planning agency considers the submission of the plan to be in the best interest of the public and the environment; or

(f) It has been twenty (20) years since the regional planning agency or its successor has submitted a regional facility plan.

Section 3. Regional Planning Agencies. (1) Governmental entities such as cities, counties, and other public bodies that are created by KRS Chapter 67, 67A, 74, 76, 96, 108, or 220 may apply to the cabinet to become a regional planning agency, if they have not already been designated as a regional planning agency, by submitting a regional facility plan. The cabinet may designate the entity as a regional planning agency if it finds that the proposed area is not served by another regional planning agency; the development of this agency would be in the best interest of the public and the environment; or the agency has the legal, institutional, managerial, and financial capability, and specific activities necessary to carry out its responsibilities in accordance with Section 208(c)(2)(A) through (I) of the CWA.

(2) Designation. Regional planning agencies may be designated by the cabinet in accordance with Section 208(a)(2) and (3) of the CWA and this administrative regulation. Designations and de-designations shall be subject to approval by the U.S. EPA in accordance with Section 208(a)(7) of the CWA.

(3) De-designation. The cabinet may modify or withdraw the planning designation of a regional planning agency if:

(a) The regional planning agency requests the cancellation;

(b) The regional planning agency fails to meet its planning requirements as specified in grant or loan agreements, contracts, or memoranda of understanding; or

(c) The regional planning agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries.

(4) Impact of de-designation. When a regional planning agency's designation has been withdrawn, the cabinet shall assume direct responsibility for continued water quality planning and oversight of implementation of planning activities within the area.

Section 4. Contents of Plan. The regional facility plan shall include the necessary information to allow for an environmental assessment and to assure that the most cost-effective and environmentally sound means of achieving the established water quality goals can be implemented. These plans shall contain the following information:

(1) Maps showing the planning area. In the determination of a planning area, appropriate attention shall be given to include the entire area where cost savings, regionalization, other management advantages, or environmental gains may result from interconnection of individual sewage facilities or collective management of the systems. At least one (1) original seven and one-half (7 1/2) minute USGS topographic map shall be submitted showing the planning area. Computer generated USGS data compatible with the cabinet's computer system may be substituted for the USGS map.

(2) A description of the existing regional facilities, including physical condition, hydraulic and organic design capacities, characteristics of wastewater, ability to meet permit limits, method of sludge handling and disposal, existing flows including average and peak flows, a waste load allocation for the proposed project, inflow and infiltration problems including location and frequency of bypasses or overflows, combined sewers if any, the collection system including location of pump stations and their capacities, and operation and maintenance problems. The location and identification of any other sewage treatment plants located in, or serving a part of, the planning area shall also be shown.

(3) A description of the planning area characteristics, including the location of wetlands, delineation of the 100 year floodplain area, topography, groundwater, surface streams, geology, soils with specific mention of suitability or unsuitability of soils, and topography for on-site sewage disposal systems.

(4) If there is a proposed project, a discussion of the need for the project including current compliance status, applicable permit limits, and if proposed sewers are involved, documentation as to why on-site systems are not acceptable. Discussions and documentation of any water quality or public health problems in the area shall be included. The applicant shall also describe any type of state or federal enforcement actions that may exist against any wastewater treatment plant within the area.

(5) A discussion of the current and projected population in the planning area including existing population in the current service area, twenty (20) year projected population in the current service area, existing population in unsewered parts of the planning area, and twenty (20) year projected population in the unsewered parts of the planning area. Current and projected industrial and commercial users of the system shall be included. When appropriate, those areas of the planning area not currently sewered should be divided into three (3) time frames: present to two (2) years, three (3) to ten (10) years, and eleven (11) to twenty (20) years. The current and projected populations shall be shown for each area on the planning area map. If available, a local planning and zoning land use map shall be included. The basis for the projected population change shall be identified.

(6) A detailed evaluation of alternatives, along with a twenty (20) year present worth cost analysis for each alternative. All wastewater management alternatives considered, including no action, and the basis for the engineering judgement for selection of the alternatives chosen for detailed evaluation, shall be included. Sufficient detail shall be provided to allow for a thorough cost analysis to be conducted. Nonmonetary effectiveness criteria shall be limited to implementability, environmental impact, engineering evaluation, public support, and regionalization. The alternatives shall reflect a comprehensive regional plan for the planning area and shall minimize the number of point source discharges. Intended sources of funding shall be listed along with estimated user fees.

(7) In addition to the cost for the current project being proposed, cost estimates shall be given for the entire twenty (20) year planning period. Cost estimates shall be provided for each time frame identified in subsection (5) of this section and shall be broken down by the following categories: secondary wastewater treatment, advanced wastewater treatment, inflow and infiltration correction, major sewer rehabilitation, new collector sewers, interceptor sewers, combined sewer overflow corrections, and storm water pollution corrections.

(8) Documentation of public participation. A copy of the advertisement for the public hearing required by Section 5 of this administrative regulation and a copy of the minutes of the public hearing and any written comments and responses shall be submitted as part of the regional facility plan. If more than one (1) public hearing was held or if there were public meetings or public notices of the project, copies of all documentation of these events shall be submitted as part of the plan. At the required public hearing, the scope of the project, cost of the project, alternatives considered, and estimated user charges and hook-up fees shall be discussed.

Section 5. Public Notice, Public Comment, and Public Hearing Requirements. (1) Prior to the approval of the regional facility plan or updates to the plan, the regional facility planning agency shall give public notice of its draft plan and shall hold a public hearing on the draft plan. Public notice of the draft plan and the public hearing on the draft plan shall be given pursuant to [KRS Chapter 424](#).

(2) All public notices issued under this administrative regulation shall contain the following information:

(a) The name and address of the regional planning agency which drafted the plan;

- (b) A brief description of the contents of the draft plan and the area to be served;
 - (c) The name, address, and telephone number of persons from whom interested persons may obtain further information including copies of the draft regional facility plan;
 - (d) A brief description of the procedures for the public's right to comment required by this administrative regulation;
 - (e) A reference to the date of any previous public notices relating to the draft regional facility plan;
 - (f) The date, time, and place of the hearing on the draft plan; and
 - (g) A brief description of the nature and purpose of the hearing.
- (3) The public shall be given an opportunity to comment on the draft plan and the period for comment shall remain open for thirty (30) days from the date of the first publication of the notice of the public hearing or until the termination of the hearing, whichever is later. Commentors may request longer comment periods, which may be granted by the regional planning agency, if appropriate.
- (4) Any person may submit written or oral statements and data to the regional planning agency concerning the draft regional facility plan. Reasonable limits may be set up on the time limit for oral statements and the submission of statements in writing may be required.
- (5) All persons who believe any condition of the draft plan is inappropriate, inaccurate, incomplete, or otherwise not in the best interest of the public and the environment, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and factual background supporting their position, including all supporting materials, by the close of the public comment period.

Section 6. Action on the Plan. (1) An environmental assessment report will be written by the cabinet which summarizes the regional facility plan. The cabinet will submit the assessment report to the State Clearinghouse for review and comments. Mitigative measures may be required to address any negative comments as a result of this review.

(2) If the cabinet finds that the regional facility plan has been properly submitted and is in the best interest of the environment and the public, the cabinet will approve the plan.

Section 7. Consistency with Plans. Construction grant, loan, and permit decisions shall be made in accordance with certified and approved water quality management plans, including regional facility plans, as described in [40 CFR 130.12\(a\) and \(b\)](#) and this administrative regulation.

Section 8. Nonpoint Source Controls. Regional planning agencies may implement plans for nonpoint source controls, other than plans for agricultural nonpoint source controls, in their designated areas. Regional planning agencies may develop plans for agricultural nonpoint source controls in their areas, if the plans are developed in coordination with the Agriculture Water Quality Authority, established pursuant to [KRS 224.71](#). These plans may be included in the comprehensive water quality management plan that may include the regional facility plan. (23 Ky.R. 1814; Am. 2780; eff. 5-14-1997; TAm eff. 8-9-2007.)